A SYNOPSIS STATEMENT

ON

CRIMINAL ADMINISTRATION OF JUSTICE IN INDIA WITH SPECIAL REFERNENCE TO VICTIM COMPENSATION:

EMERGING ISSUES AND CHALLENGES

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INTRODUCTION

Crime is considered as a disturbance of a legally protected interest i.e., the criminal violation of law and order, which involves an injury done by an individual to another individual. This injury may be in the form of physical, psychological or financial. Two terms i.e., Crime and society are entwined with each other and are inseparable since times immemorial. It would be a myth to think of crimeless society as human civilization has been facing the baffling problem of crime since time immemorial. Crime infact is the most infuriating problem of the society which pollutes the healthy climate of any civilized country and leaves dark ineffaceable marks on the sands of time of the human civilization with gloomy horizons. There is however a tremendous change in crime rate in many countries in recent times. A crime produces a large number of victims who suffer physical, social, financial or emotional injuries or harm which need to be addressed. The Criminal Administration Justice System mainly focuses on crime and criminal and not on the victim. So, the forgotten man in the legal world and society is called as the "victim", to improve whose plight is the need of the legal system and the objective of the undertaken research work. Crime influences the victims and their families. The effect of crime on the victims and their families ranges from genuine physical and mental wounds to gentle aggravations.

The victim no doubt is an inseparable part of crime. The concept of crime cannot be explained without incorporating the victim of a crime. In the Criminal Justice System, Crime victim, despite being an integral part of crime and a key factor, has remained a forgotten entity as his status got reduced to report crime and to appear in the Court as a witness and he faces postponements, rescheduling, delays and other frustrations in routine in the Law of Courts.
Law regulates the social interests and arbitrates conflicting claims and demands. The essential function of the state is the security of person and property and the same can be done through the instrumentality of criminal Law. However, from the point of view of the victims of crime, administration of Criminal Justice System remains generally inadequate. The satisfaction, which the victim is only expected to get from Criminal Justice System, is the punishment inflicted upon the criminal. The tendency of modern criminology focuses upon legal aid, reform and rehabilitation of the accused. The injuries and sufferings of the victim gradually lost place as the main concern of Criminal Justice System. The State, while administering criminal justice does not fight against the abstract legal principles, but against the anti-social acts of living human, i.e. its citizens, causing immense harm and pain to others. The object of

the punishment should not be merely to shelter and reform the criminals but should also be directed towards enabling all citizens to participate in the restoration of law and order. There is need for conserving the interests of the victims. Therefore, it has to be seen in what manner the administration of criminal justice can be re-oriented so that it can also be of adequate benefit to the victim who has suffered at the hands of criminals.

Protecting and conserving the interests of the victims is needed. Sheltering, reforming and punishing the criminal should not be the sole aim of the Criminal Justice System, but the attention should also be directed towards the need for enabling all citizens to participate in the restoration of law and order. So, we should ensure that the administration of criminal justice should be re-oriented towards providing benefits to the victim who suffers at the hands of a criminal.

The Criminal Administration Justice System, however, today is concerned with crime. The purpose of the Criminal Justice System is to protect the rights of the individual and the State against the intentional invasion of the criminals who violate the basic norms of the society. The object of criminal justice is to punish the offender and to protect the society against crimes. The experiences of countries worldwide showed that the many requirements of the crime victims can be addressed effectively by setting up programmes that "provide social, psychological, emotional and financial support, and effectively help victims within criminal justice and social institutions."

Criminals whether it is their conviction, reformation, treatment, or rehabilitation. Right from the initial stage of the case accused enjoys various benefits as he is presumed to be innocent and burden of proving his guilt beyond all reasonable doubts lies on the prosecution. These benefits give rise to various Constitutional and legal rights of the offender. The abundance of rights an accused has, includes the right not to be subjected to arbitrary arrest, detention, search or seizure, right to counsel, presumption of innocence, standard of proof, right to fair trial, trial to be held before an independent Court, right to cross the prosecution evidence, right to appeal, right to legal aid, right to give and call evidence, right to be heard on quantum of sentence, benefit of doubt, and so on. The victims are generally considered as mere informants or witnesses in criminal trials, assisting the State in its endeavor to punish the offenders, however are now becoming the focal points of our Criminal Justice System, though the process is slow.

The Criminal Justice System is basically meant to redress the victimization of these victims and to address the issues surrounding them. However getting justice in Indian Criminal Justice System is not a bed of roses for the victims of offence.

Attention towards the plight of victims of crime is in fact only a recent phenomenon. This is evidenced by the importance given to the victim by the media, which attempts to highlight the trauma that the victim suffers, sensationalizing the whole process of Criminal Justice System in India. However, when one examines the role of the victim in the Criminal Justice System, especially in countries that follow the adversarial system, it appears that the society seeks to sympathize with the victim, but does not consider it important enough to give the victim a role in the prosecution of the crime committed against him or her, and neither are his grievances addressed adequately. The birth of the victims‟ movement led to marked improvement in the position of victims of crime. Whereas till the 1970‟s the victim of crime was the forgotten party of the Criminal Justice System, by the turn of the century the victim has returned.8 Laws recognizing that the injured parties too required government support and economic aid were passed centuries ago. However, "until the middle of the twentieth century the plight of crime victims was largely overlooked, by most Criminologists." This situation changed with the coming of Victimology as a separate branch of study.

At present the concept of victim compensation is rapidly developing. By way of compensatory jurisprudence and the victim is no longer forgotten in the Criminal Justice System. Victim compensation means payments that are made by the government to the victims of crime. According to Stephen Schafer, in a criminal victim relationship refers to "Compensation concerns the counter balancing of the victim's loss that result from the criminal attack. This means making amends to the victim or "perhaps better stated, it is compensation for the damage or injury caused by a crime against him. It is an indication of the responsibility of the society; it is a claim for compensating action by the society, it is civil in character and thus represents a noncriminal goal in a criminal case."

VICTIM COMPENSATION

"Victim compensation takes place when the state, rather than the perpetrator reimburses the victim for losses sustained at the hands of the criminal." The trend of State compensation which

has grown in recent times “has been promoted by international conventions such as the European Convention on the Compensation of Victims of Violent Crime.”

The UN Declaration, 1985 mentions that whenever victims are not able to recover compensation fully from the offender or other source, the State should endeavour to provide financial compensation to (a) victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) the family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

Concept of victim compensation is not of a recent origin. This form of remedy existed in the past in many historical places such as ancient Greece and Rome, biblical Israel, Teutonic Germany, and Saxony England. However, for various reasons this form of remedy lost its usefulness in the Middle Ages. In modern times, the philosophy of compensation has found many adherents. In the writings of Jeremy Bentham, the philosophy of compensation found an expression. He argued that “society was morally obligated to compensate the victim of crime because of society’s failure to provide protection.”

VICTIM SUPPORT SERVICES

Victim Support Services are such activities that are applied in response to victimizations with an intention of providing relief to the sufferings and facilitating recovery. These activities include offering individual interventions, information, assessments, system advocacy, case advocacy, public policy and programme development.

Crime may be viewed as a violation of not only a legal framework but also of individuals, of individual rights, and of society as a whole. Violence prevention at any level should be seen as a primary obligation of governments to protect the individuals they govern. Whenever societal protections fails, assistance to the victims is inherently demanded. Violence prevention promotes and sustains safety and security. The reparative mission of justice system should be to enforce the order of law and to restore a sense of safety and security to victims and the general community. Providing victims’ rights and services, then, does more than give humane treatment to people who deserve it; it should be seen as essential components of the whole justice enterprise.

As the victimologists “were discussing the theory of victimology and developing surveys of victimization, there was a concurrent development in the field of traumatology. This work focused on the psychological impact of individual and social catastrophes.” In the year 1980, the post-traumatic stress disorder (PTSD) was acknowledged as a formal diagnosis in the

psychiatric nomenclature. This “resulted in an explosion of scientific studies on how people react to all sorts of trauma, including, most significantly, criminal victimization.”

Fear is a defining feature of becoming traumatized and hence researchers in both victimology and traumatology began to revisit the role of fear in the study and impact of victimization. Initially, that research helped confirm the usefulness of many innovative practices that were being employed by practitioners refine their skills and become more aware of how interventions in trauma can be either successful or unsuccessful.

OBJECTIVE OF THE STUDY

1. To analyze the efforts made in the world today with special reference to India to provide compensation and support services.
2. To have conceptual clearance about the notion of victim, its meaning, factors responsible for victimization and kinds of victims of crimes.
3. To study the elements of compensatory jurisprudence and the scheme of victim support services in different jurisdictions.
4. To point out the problems and loopholes in existing present laws.
5. To study about the special Remedial Laws in India on compensation to victim.
6. To analyze both early and contemporary judicial thinking and legal reasoning regarding victims' compensation and support services in India.
7. To understand the changing concept of victimology and its emergence and importance.
8. To help bring out social changes and social and economic upliftment of the downgraded and special classes of victims of crime in India.
9. To analyze worldwide efforts in the field of victim compensation
10. To analyze the provisions of compensation to victim under the Criminal Law.
11. To make suggestions to curb the problems and ameliorate the plight of victims.

RESEARCH METHODOLOGY

As we have discussed the objectives and keeping in view of it, the present research study was carried out by using the Doctrinal method or the traditional method of research. To complete this study, we have tried to analyze the topic by studying various Case Laws, Articles, Newspapers, Acts of Parliament and State Legislatures, Books, Law Reports, Journals, Web references etc. The focus is more upon primary sources and secondary sources while doing the research.

The law library is used to study and do the research and the conventional legal resources of the concerned authorities were used. The relevant material in the research is collected both from primary as well secondary sources. Materials and information are collected from legal sources like Law Books, Journals, and Court Reports etc. A necessary part of study is the study of global position i.e. the criminal justice which has provided the scope for making the study comparative and analytical. The research has also been performed by descriptive method to form a sound base for the further application of the analysis of research. The method has been used to describe the present state of affairs and the different Laws, and their nature, with the main focus being on the Criminal Law dealing with the subject matter of the research. Also, the analytical approach has been followed to make a critical evaluation of the findings of the above stated method.

HYPOTHESIS

- Adequate compensation and support services to the victims is an imperative for an integrated and effective criminal justice administration.
- The victim compensation scheme is not adequate in the present scenario due to victim proneness and lack of legal support to the ignorant victims.
- In the present scenario the victim is no longer a forgotten entity and the society is revolutionizing to protect the rights of the victim of a crime.
- Indulgence of victim in trial is not facilitated due to the scheme of present Criminal Justice System which lacks the victim orientation. In fact, victim still remains to be just a witness in his own case.
- Increase in technology and poor socio-economic development has increased victimization. Lack of education, gender bias, poverty, lack of sensitization of the human rights in developing societies are other factors contributing to the victimization of the society.
- The victims suffer irreparable damages and the harms in the form of physical and psychological effects during and after the crime.
- There is an increase in victimization even after the passing of numerous amendments in various laws especially after the landmark Amendment Acts of 2008 and 2013 of Criminal Laws.
- The absence of the institutional set up and weak judicial determination to compensate the victims in real sense has increased the suffering.
- Despite of India being one of the most litigious country the compensatory jurisprudence has not developed to the satisfactory level.
- The class action law suits should be encouraged to club the pending cases and fast track them in order to provide speedy relief to the crime victims.

REVIEW OF LITERATURE

Andrew Karmen in his book Crime Victims An Introduction To Victimology mentions that the concept of victim can be traced back to ancient societies. Victim was connected to the notion of sacrifice. In its original meaning, a victim was a person or an animal put to death during a religious ceremony in order to appease some supernatural power or deity. Over the centuries, the term victim has picked up additional meanings. Nowadays it commonly refers to individuals who have suffered injuries, losses, or hardships for any reason. Crime victims are harmed by illegal acts.

According to Burt Galaway and Leonard Rutman in their article Victim Compensation: An Analysis of Substantive Issues, contemporary victim- compensation plans are generally traced to Margarey Fry who was an active member of the Howard League of Penal Reform in London. In the Indian context, the criminal law in early Vedic period civilization was designed in a manner to compensate the victim and not to punish the offender. The ancient India had a well-developed scheme to award compensation to the victims of crime. This can be found in Kautilya's Arthashastra. Subsequently with time the institution of compensation began to lose its force as victims were treated as forgotten men of the criminal justice delivery system.
In the issue of 'THE VICTIMOLOGIST dated November 3rd, 1998, K. Chockalingam in his article IMPLEMENTATION of the UN DECLARATION on VICTIMS Recent Developments in India, mentions

In India, enlightened judges of the Supreme Court and High Courts who belong to the higher judiciary and the academicians and researchers in criminology as well as some conscientious police officers acknowledge the plight of victims. For the Last two decades they have expressed their views that victims need to be given a better deal. This is evident from some of the judgements by the judiciary, since the early 1980s, ordering compensation to victims of crime and abuse of power and using the inherent powers of the court in order to achieve this.
He also mentions that the courts in India have used the term compensation for restitution to victims of crime by the offenders and for compensation to victims by the State. Section 357, 358 and 359 of the CrPC empowered criminal courts in India to order payment of compensation (restitution) to the victims from fine imposed on the offender. But then in present time we find there is a clarion call across the globe for awarding compensation to victims or rather protecting the interests and rights of the victims. Murugesan SRINIVASAN and Jane EYRE MATHEW

in their article Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System55, stated that until 1970's the victims of crime were a forgotten entity in the criminal justice system. There was a shift in this attitude with the rising of Victimology as a subject. Many countries like UK, USA across the globe have now recognized the need to provide services to victims to help them recover from the effects of crime and assist them in their dealings with the criminal justice system. This article mentions that in the current decade of victimological research, there is a substantial interest in the study of impact of crime on victims and ways to assist them. Assistance to crime victims is of great significance as they suffer irreparable harm and damages as a consequence of the crime.

UN GA in the year 1985 recognizing the denial of justice (fair trial) to victims in certain legal systems, adopted the UN Declaration, 1985. This Declaration asks its member States to incorporate the following four categories of rights of victims of crime in their respective system of justice:

I. Access to Justice and Fair Treatment
II. Right To Restitution
III. Right to Compensation
IV. Right to Assistance

In India, the primary object of CJS is to ensure that no innocent person gets punished and every accused person gets a fair opportunity to prove his innocence. But, then as has been mentioned by Madhava Menon, one cannot forget that the very foundation of State's authority to intervene on behalf of the victim in criminal proceedings is the promise made to the victim by the State that the State will take the responsibility to ensure justice on his behalf. How is this promise organized in criminal trials and is the victim given justice as promised? As pointed out by Murugesan Srinivisan, though there are some provisions under the Indian Constitution and some sections in the CrPC to protect the rights of the victims and for providing compensation, the criminal courts at the lower level in India have ignored those provisions for a long time and not utilized them during their sentencing processes. He again mentions that it is heartening to see that several judgments delivered by both the High Courts and the Supreme Court in the last two decades have come to the rescue of victims. The provision of Section 357 was invoked rarely by our courts to give compensation to the victims. The Law Commission of India and the Malimath Committee have also recommended strengthening the compensatory measures. Thus, the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009) has

incorporated section 357A to establish State Sponsored Compensation. Section 357A envisages that Governments of States with the co-operation of the Central Government shall provide the funds so that the adequate compensation can be given to the victims. The judiciary has now the role of only recommending for compensation and it is the State or the DLSA which will decide the amount of compensation. In keeping with the spirit of section 357A, CrPC, we find the State Governments and UTs of India started framing laws for awarding compensation to the victims. Thus we can say that the rights of victims are now being partially recognized in India with lot to develop in this regard and many more changes and new laws can also be developed to give justice to the victims also.